

COURT OF APPEALS  
DIVISION TWO  
OF THE STATE OF WASHINGTON

FILED  
COURT OF APPEALS  
DIVISION II  
2015 AUG 29 PM 12:46  
STATE OF WASHINGTON  
BY \_\_\_\_\_ DEPUTY

STATE OF WASHINGTON )

Respondent, )

v. )

Louis Thibodeaux )

(your name) )

Appellant. )

No. SS095-1-11

STATEMENT OF ADDITIONAL  
GROUND FOR REVIEW

I, Louis Thibodeaux, have received and reviewed the opening brief prepared by my attorney. Summarized below are the additional grounds for review that are not addressed in that brief. I understand the Court will review this Statement of Additional Grounds for Review when my appeal is considered on the merits.

Additional Ground 1

1. IN-effective assistance of both Trial and sentencing counsel

1- Ted Scudder

trial

2. Ted DeBray

3.3 violations

See Attachment p. 1-6

Additional Ground 2

2. Unlawful Sentence & Judgment - See Attachment p. 1-6

Additional Ground 3

3. Insufficient Evidence -

See Attachment p. 1-6

If there are additional grounds, a brief summary is attached to this statement.

Date: August 23, 2019

Signature: Louis Thibodeaux

**No. 53091-1-II**

**IN THE COURT OF APPEALS  
FOR THE STATE OF WASHINGTON  
DIVISION II**

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**STATE OF WASHINGTON**

**RESPONDENTS,**

**v.**

**LOUIS THIBODEAUX**

**APPELLANT.**

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**ON APPEAL FROM THE  
SUPERIOR COURT OF THE STATE OF WASHINGTON  
FOR COWLITZ COUNTY**

**Honorable Michael Evans, Judge  
Additional Grounds for Review from  
APPELLANT'S BRIEF  
Louis Thibodeaux-Pro Se**

**Louis Thibodeaux #941031  
SCCC/H4-33L  
191 Constantine Way  
Aberdeen, WA 98520**

## Table of Contents

Ground 1	Page 1
Issues	1
#1, #2, #3	1, 2
Arguments #1 & 2	2
Remand	2, 6
Conclusion	6

## Table of Authorities

Washington Cases	Page
1. State v. Aten	3
2. State v. Bahl	6
3. State v. Coombes	6
4. State v. Green	3
5. State v. Hendrickson	4
6. State v. Hickman	3
7. State v. Johnson	4
8. State v. Kullo	4
9. State v. Leavitt	4
10. State v. Mayer	6
11. State v. McFarland	4
12. State v. Moore	4
13. State v. Salinas	3
14. City of Seattle v. Pearson	5
15. State v. Saunders	4
16. Stockland v. Washington	4
17. State v. Thomas	4

STATEMENT OF ADDITIONAL GROUNDS FOR REVIEW

- A. Ground 1 –In-effective Assistance of trial counsel - CrR 3.3
- B. Unlawful Sentence & Judgment - Ground 2
- C. Insufficient Tainted Evidence used to obtain convictions, that does not support crimes charged.  
Ground 3

1. Appellant was denied effective assistance of Trial Counsel.
2. There is scrivener's error in the judgment and sentence, the sentencing court erred by imposing an unlawful sentence of an offender as having 9 points.
3. The evidence was insufficient to sustain convictions for delivery of methamphetamine as alleged in Counts II & III.

Issues Pertaining to Additional Grounds Errors

1. Was appellant deprived of his right to effective assistance of counsel under the Sixth Amendment and Wash. Const. Article I, § 22, when his trial counsel failed to move to exclude the judge reading for the jury to predicate stipulation of fact required to convict appellant of the charges of delivery of methamphetamine, no objections was done prior to the entering of those false stipulation, the motion would have been granted if made when admission of those stipulations, it's suppose only read the state does not wish to call their remaining witnesses, not what I read first before I signed those stipulations, it does not say the state wishes not to call and rest. The judge told the jury to accept the stipulations as true, made it look as if I was guilty, the outcome would have been different made appellant guilty of Count 1 as well, that count does not sustain a conviction of delivery, no money nor drugs was in my presence, had counsel hired and investigator the outcome would have proved my prints was not on those baggies?

2. *Does a trial court violate a defendant's right to due process under the Washington Constitution, Article I, § 3, and the United States Constitution, Fourteenth Amendment, if it enters judgment against him for a crime unsupported by substantial evidence?*
3. *Following the Revised Codes of Washington, and after the enactment of RCW 9.94A.525(5)(a)(i), this court should reverse the unlawful sentences for the present charges unlawful 9 point range used to sentence him unlawfully.*

#### ARGUMENTS

1. *Trial court erred in imposing the unlawful sentences and unlawful points range*
  - a. *A trial court may sentence an offender with such range only if the points system under Washington's RCW 9.94A.525(5)(a)(i).*

*Based on an offender score of 9 points defense counsel should have objected to the unlawful range, the record will reflect differently see the amended criminal history. Those 4 Cowlitz County charges are Gross Misdemeanors should not have been used for points. Those 5 pending charges should not have been used as 5 points either. See Prosecutor's Second Amended Criminal History, Line 6 & 7, 9 & 10, Attempted Drug Crime & Failure to Transfer Title, those 4 dropped down in a plea to a gross misdemeanor, should wash and not be used as 4 points. I was found guilty on a Vusca 17-1-01383, that point is correct, but the sentence was incorrect, does not sustain conviction of and offender having 9 points, its county time. Those 5 pending charges should not have been used for 5 points to sentence appellant, those was dismissed by the prosecution because he could not prove guilty verdicts.*

*All 5 charges were planted by the Longview Streets Crimes Unit by confidential informants working for them. See Cause # 18-1-00686-08 x1 / 18-1-01149-08 x3, an investigation by the federal government should investigate that unit thoroughly.*

*The due process clause of the federal and state constitutions require the prosecution prove every element of a crime beyond a reasonable doubt. Apprendi v. New Jersey, 530 U.S. 466, 476-77, 120 S.Ct 2348, 147 L.Ed.2d 435(2000); In re Winship, 397 U. S. 358, 364, 90 S.Ct 1068, 25 L.Ed.2d 368(1970); U.S. Const.amends 6, 14; Wash. Const.art. I, § 3, 21, 22. The critical inquiry on appellant review is whether, after viewing Mr. Tiller's brief, the additional grounds are subjective to be dismissed in the light most favorable to the prosecution, a rational trier of fact could have found the elements of the crime beyond a readonable doubt. Jackson v. Virginia, 433 U.S. 307, 334, 99 S.Ct 2781, 61 L.Ed.2d 560(1979); State v. Green, 94 Wn.2d 216, 220-22, 616 P.2d 628(1980). Further, when the sufficiency of the evidence is challenged in a criminal case, all reasonable inferences from the evidence must be drawn in favor of the prosecution and interpreted against the defendant. State v. Salinas, 119 Wn.2d 192, 201, 829 P.2d 1086(1992)*

*Evidence such as compared to the brief filed by my appellant attorney opens the door for my additional grounds that is equally consistent with innocence as it is with Counts II & III, guilt is not sufficient to support conviction, it is not substantial evidence. State v. Aten, 130 Wn.2d 640, 927 P.2d 210(1996).*

*A challenge to the sufficiency of the evidence may be raised for the first time on appeal as a due process clause violation. State v. Hickman, 135 Wn.2d 97, 954 P.2d 900(1998); State v. Moore, 7 Wn.App 1, 499 P.2d 16(1972). Counsel failed to file a motion to dismiss CrR 3.3 as well Motion for Severance of all charges RCW 85.05.120.*

*Thibodeaux's trial counsel rightly conceded deficient performance by failing to prevent the jury from hearing the stipulation of facts, the way the Honorable Evans read it to the jury was not what was agreed upon by appellant, what was supposed to be told to the jury the state intended to not call the last witnesses. That wasn't explained to me correctly, itsounded really good, the prosecutor Mr. Brittain falsely used tactics to produce evidence of guilt to the tainted evidence presented at trial, that bolstered*

*the prosecution's case and prejudiced Thibodeaux's defense, this Court should reverse and remand for a new trial.*

*A claim of in-effective assistance of counsel is an issue of constitutional magnitude that mat be considered for the first time on appeal. State v. Kylo, 166 Wn.2d 856, 862, 215 P.3d 177(2004) every criminal defendant is guaranteed the right to effective assistance of counsel under the Sixth Amendment and Article I, Section 22. Strickland v. Washington, 466 U.S. 668, 665-86, 104 S.Ct. 2052, 80 L.Ed.2d. 674(1984); State v. Thomas, 109 Wn.2d 222, 229 743 P.2d 816(1987)*

*Counsel performance is deficient when it falls below an objective standard of reasonableness and is not undertaken for legitimate reason of trial strategy or tactics. State v. Saunders, 91 Wn. App. 575, 958 P.2d 364(1998); State v. McFarland, 127 Wn.2d 322, 336, 899 p2d 1252(1995). The deficient performance is prejudicial where there is a reasonable probability that, but for counsel's unprofessional error, the result of the proceeding would have been different. Strickland, 466 U.S. at 687-88; Saunders, 91 Wn.App. at 578. It is well settled that failure to object to inadmissible tainted testimony and evidence constitutes deficient performance. See e.g., State v. Leavitt, 49 Wn.App 348, 359, 743 P.2d 270(1987) aff'd, 111 Wn.2d 66, 72, 758 P.2d 982(1988)(lack of timely objection to admission of child heresay statements constitutes deficient performance); State v. Hendrickson, 129 Wn.2d 61, 79, 917 P.2d 562(1995); overruled on other grounds by Casey v. Musladin, 549 U.S. 70, 127 S.Ct. 649, 166 L.Ed.2d 482(2006).*

*Because Thibodeaux bases his in-effective assistance claim on counsel's failure to challenge the admission of tainted evidence, altered video, altered audio, not calling witnessed given to him a year before trial, the alleged money never taken off me, planted drugs bu Street Crimes Unit, never giving me discovery, nor hire an investigator, never interviewing the Confidential Informant, he must show that had counsel done those required things mentioned, likely would have been sustained. Saunders, 91 Wn.App at 578(citing McFarland, 127 Wn at 337, n. 4). Here, defense counsel's failure to prevent the court from*

*Revealing those added miscarriages of justice constitutes deficient performance that prejudiced Thibodeaux.*

*Evidence must be excluded if its probative value is substantially outweighed by risk of unfair prejudice. ER 403 Evidence is unfairly prejudicial if it is "likely to provoke an emotional response rather than a rational decision." Johnson, 90 Wn.App at 62., Evidentiary rulings are received for abuse of discretion. State v. Johnson, 90 Wn.App 54, 62, 950 P.2d 981(1988).*

*While the courts in Old Chief and Johnson recognized the general rule that the prosecution may choose how to present its evidence in an attempt to prove guilt, they also noted that this rule has "virtually no application when the point at issue is a defendant on some judgment rendered wholly independently of the concrete events of later criminal behavior charged against him." Johnson, 90 Wn.App 62-62(quoted Old Chief, 519 U.S. at 190).*

*The Old Chief court further explained that: proving statutes without telling exactly why that statute was imposed leaves no gap in the story of a defendant's subsequently criminality, and its demonstration by stipulation or admission neither displaces a chapter from a continuous sequence of conventional evidence nor comes across as an officious substitution, to confuse or offend or provoke approach. Old Chief, 510 U.S. at 190, 117 S.Ct. at 654-55.*

*A court abuses its discretion when its decision is based on untenable grounds. City of Seattle v. Pearson, 192 Wn.App 802, 817, 369 P.3d 194(2016)*

*Old Chief analysed the federal ER 403, but its reasoning and holding were explicitly adopted and applied to Washington State's ER 403 in Johnson*

*As such, the prosecution does not suffer any prejudice when some extant legal status of the accused is proved by stipulation rather than by the admission of court documents. Id. Indeed, the functional difference between the value of a stipulation to their evidence of a court record is*



*"distinguishable only by the risk [of unfair prejudice] inherent in one and wholly absent from the other."*

*Id.* This court should therefore reverse and remand for a new trial.

**REMAND IS NECESSARY TO CORRECT A SCAVENER'S ERROR**

a. A defendant may challenge an erroneous sentence for the first time on appeal. *State v. Bahl*, 164 Wn.2d 739, 744, 193 P.3d 678(2008). CrR 7.8(a) provides that clerical errors in judgments, orders, or other parts of the record may be corrected by the court at any time on its initiative or on the motion for any party. Scrivener's errors are clerical errors that result from mistakes or inadvertence, especially in writing or copying something on the record. In *re Personal restraint of Mayer*, 128 Wn.App 694, 701, 117 P.3d 353(2005)

a. There is a scrivener's error in Thibodeaux's judgment and sentence because it states, criminal history of an offender's score of having 9 points, where the criminal history produce only 4 Cowiltz County charges of Gross Misdemeanors and 5 pending charges, I found guilty and 4 dismissed, Mr. Thibodeaux should not have had any points

The remedy for a Scrivener's error in a judgment and sentence is remand to the trial court for correction. CrR 7.8(a); *State v. Coombes*, 191 Wn.App 241, 255, 361 P.3d 270(2015).

**CONCLUSION**

For the reasons stated, this Court should reverse and remand for a new trial. In the alternative, this Court should remand to correct the judgment and sentence.

*August 23, 2019.*

*Louis Thibodeaux*

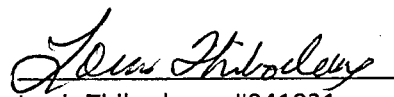
CERTIFICATE OF SERVICE

The undersigned certifies that on August 23, 2019, that this Appellant's Additional Grounds was sent by U.S. Mail, to Mr. Derek M. Bryne, Court of Appeals Clerk of Court, Division II, Sean Brittain, Cowlitz County Prosecuting Asst. District Attorney Office, Peter B. Tiller Appellant's Attorney, postage paid as follows:

Mr. Derek M. Bryne	Sean Brittain	Peter B. Tiller
Clerk of Court	Cowlitz County DA Office	Appellant's Attorney Office
Court of Appeals	312 SW 1 <sup>st</sup> Ave., #105	P.O. Box 58
950 Broadway, #300	Kelso, WA 98626	Centralia, WA 98531
Tacoma, WA 98402		

This statement is certified to be true and correct under penalty of perjury, of the laws of the State of Washington, signed at Aberdeen, Washington on August 23, 2019.

August 23, 2019.

  
Louis Thibodeaux #941031  
Pro Se  
SCCC/H4-33L  
191 Constantine Way  
Aberdeen, WA 98520

August 23, 2019

Mr. Derek M. Bryne  
Clerk of Court  
Court of Appeals  
950 Broadway, #300  
Tacoma, WA 98402-4454

Dear Mr. derek M. Bryne:

RE: State of Washington vs. Louis Thibodeaux  
Court of Appeals No: 53095-1-II  
Cowlitz County Superior Court No. 17-1-00825-08

The appellant Louis Thibodeaux, has sent a copy of his additional grounds to be filed in the Court of Appeals for review in the above-named matter. And copies have been mailed to Sean Brittan, and appellant's attorney Mr. Peter Tiller, on the same date herein.

Thank you,

Very Truly yours,



Louis Thibodeaux #941031

Pro Se  
SCCC/H4-33L  
191 Constantine Way  
Aberdeen, WA 98520

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STATE OF WASHINGTON

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